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In re Patent No. 7,231,668
Issue Date: June 12, 2007
Application No. 10/815,092
Filed: March 31, 2004
Attorney Docket No. 065426.0002

: **OFFICE OF PETITIONS**
: **DECISION ON PETITION**
: **UNDER 37 CFR 1.78(a)(3)**
:
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This is a decision on the petition filed July 22, 2008, to accept an unintentionally delayed claim. The petition is being treated under 37 CFR 1.78(a)(3) and 35 U.S.C. §120 for the benefit of priority to prior-filed nonprovisional Application No. 09/104,946, filed June 25, 1998, by way of a certificate of correction filed concurrently herewith.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

Application no. 10/815,092 which was filed after November 29, 2000, matured into Patent No. 7,231,668 on June 12, 2007. The claim for the benefit of priority to a prior-filed nonprovisional application was submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Therefore, this is a proper petition under 37 CFR 1.78(a)(3).

The petition complies with the requirements for a grantable petition under 37 CFR

1.78(a)(3) in that (1) a reference to the above-noted, prior-filed nonprovisional application has been included in a certificate of correction, as provided by 37 CFR 1.78(a)(2)(iii); (2) the surcharge fee required by 37 CFR 1.17(t) has been submitted; and (3) the petition contains a proper statement of unintentional delay. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 120 to the above-noted, prior-filed nonprovisional applications satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

Petitioner's deposit account no. 04-2223 has been charged for the petition fee and the certificate of correction fee.

This application is being forwarded to the Certificates of Corrections branch for an issuance of a certificate of correction noting the priority claim to prior filed application 09/104,946 filed June 25, 1998, which matured into Patent No. 6,735,701 on May 11, 2004.

Any questions concerning this matter may be directed to Senior Petitions Attorney Patricia Faison-Ball at (571) 272-3212. Any questions regarding the Certificate of Correction should be directed to the Certificates of Correction Branch at (703) 305-8309.



Anthony Knight
Supervisor
Office of Petitions